

**Notice of Allowability**

<b>Application No.</b>	<b>Applicant(s)</b>	
09/284,806	WRIGLEY ET AL.	
<b>Examiner</b>	<b>Art Unit</b>	
Ruth A. Davis	1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to Election response filed January 2, 2004.
2.  The allowed claim(s) is/are 1-4 and 18-24.
3.  The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All    b)  Some\*    c)  None    of the:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

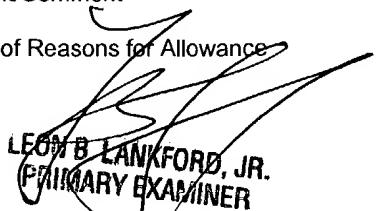
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached  
1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of  
Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 04291999
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application (PTO-152)
6.  Interview Summary (PTO-413),  
Paper No./Mail Date 04072004.
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

  
LEON B. LANKFORD, JR.  
PRIMARY EXAMINER

**EXAMINER'S AMENDMENT**

***Election/Restrictions***

1. Applicant's election with traverse of Group I, claims 1 – 4 in the response filed January 2, 2004 is acknowledged. The traversal is on the grounds that the groups are all related through unity of invention. This is not persuasive because the inventions of groups II – V are drawn to other compound structures, fatty acids, fungal strains and method of fermenting the fungal strains, different than the structure compound of Group I.

The requirement is still deemed proper between Groups I and II – V and is therefore made FINAL.

2. Claims 1 – 4 are directed to an allowable product. Pursuant to the procedures set forth in the Official Gazette notice dated March 26, 1996 (1184 O.G. 86), claims 18 - 24, directed to the process of using the patentable product, previously withdrawn from consideration as a result of a restriction requirement, are now subject to being rejoined. Process claims 18 – 24 are hereby rejoined and fully examined for patentability under 37 CFR 1.104. Claims 11 - 17, not directed to the process of making or using the patentable product, will not be rejoined.

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR

1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with William DuVaul on April 7, 2004.

The application has been amended as follows:

Claims 11 – 17 are canceled.

The following is an examiner's statement of reasons for allowance:

The art teaches fermenting *Phomopsis* species wherein phomalactones are recovered, however the prior art is silent to the phomalactones of the claimed structure.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth A. Davis whose telephone number is 571-272-0915. The examiner can normally be reached on M-H (7:00-4:30); altn. F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ruth A. Davis; rad  
April 8, 2004.